IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1362 of 1992

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALLABHBHAI MEGHJIBHAI MISTRY

Versus

SUNKANRAJ J JAIN

Appearance:

MR AC GANDHI for Petitioner

MRS KETTY A MEHTA for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 02/03/2001

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (the Bombay Rent Act for short), at the instance of the original plaintiff-landlord, who had sued the defendant-tenant for eviction and recovery of possession on the ground that the tenant was in arrears of rent for

more than six months and has not complied with the demand thereof inspite of the statutory notice under section 12(2) of the Bombay Rent Act.

2. During the Course of hearing and discussion, when the facts of the case were examined, it is found that neither the trial court nor the lower appellate court has focused its attention to the applicability of section 12(3)(b) of the Bombay Rent Act, as may be applicable to the facts found from the record of the case.

3. It is obvious that both the courts below have recorded only the finding that the landlord has failed to establish that the tenant was in arrears of rent for more than six months, and that therefore the suit is required to be dismissed. Both the courts have obviously overlooked the fact that if section 12(3)(a) of the Bombay Rent Act does not apply, section 12(3)(b) must be applied, and the facts of the case must be examined in the light of section 12(3)(b). This last exercise has not been undertaken by both the courts below.

4. On the facts and circumstances of the case, therefore the judgement and decree of the lower appellate court is set aside and the case is remanded back to the lower appellate court to re-examine the matter in the light of section 12(3)(b) of the Bombay Rent Act. It is clarified that other legal contentions which could be urged in the present revision by either side were not pressed into service and therefore they remain open.

5. Accordingly this revision is disposed of. Rule is made absolute to the aforesaid extent with no order as to costs.

6. Since the suit is a very old suit, the lower appellate court is directed to give the matter appropriate priority for the purpose of hearing and disposal, in accordance with the date of filing of the appeal.

7. Writ to be sent to the lower appellate court forthwith i.e. not later than 15th March 2001.

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